IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

First Appeal No.1783 of 2006

The Regional Director, Employees State Insurance Corporation. .. .. Appellant

V/s.

M/s.Terrotex Corporation. .. .. Respondent

Ms.Dimple Mehta with Mr.R.M.Jayakar for Appellant.

Mr.S.C. Naidu i/by M/s.C.R.Naidu & Co. for Respondent.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 19th April, 2007

P.C. :

1. The Appellant-Employees State Insurance Corporation has challenged the order of the ESI Court dated 27.10.1999, under which the order dated 19.4.1990 passed by the Deputy Regional Director of the Appellant-Corporation under Section 45A of the Employees State Insurance Act, 1948 (ESI Act) has been quashed and set aside on merits after

considering and adjudicating upon the claim of the Appellant that the Application was barred by the Law of Limitation under Section 77(1A) of the ESI Act.

2. The Appellant has raised the issue of limitation which is a mixed question of fact and law, as a substantial question of law to be considered in this First Appeal.

3. The Appellant contends that the Application should have been made to the ESI Court by the Respondent herein within three years from the issue of the first letter. Letter dated 20.1.1981 is the first letter issued by the Appellant upon the Respondent. Letter dated 29.1.1981 is similarly issued. These two letters are not shown to Court. A further letter dated 6.5.1982 requires payment of contribution from 1.7.1976. The amount of contribution is not fixed in the said letter.

4. It is the case of the Appellant that because the Respondent did not pay the contribution, as called upon by the Appellant in the aforesaid two letters, he issued a Notice dated 9.1.1990 under Section 45 of the ESI Act in Form C-18 and thereafter since the amounts were yet not paid, he passed the order under Section 45A on 19.4.1990.

5. It has to be seen as to whether the limitation starts running from the date of the knowledge under which the amount of compensation came to be fixed by the Appellant herein. The C-18 notice fixes the amount of contribution at Rs.13,660.65. This is the first time that the amount of contribution was determined and the notice for its recovery was given.

6. The Application by the Respondent was filed within 3 years of the aforesaid notice.

7. It has been argued on behalf of the Appellant that since no Application was filed after 1981-82, the Application filed after the notice issued in 1990 is barred by the Law of Limitation. The learned Judge of the ESI Court has considered this aspect. He has detailed how the period of limitation starts running from the date of C-18 notice, which for the first time determined the amount of compensation.

8. The Application made by the Respondent before the ESI Court under Section 77 of the ESI Act is for the case under Section 75(1)(g).

9. Counsel on behalf of the Respondent placed emphasis upon Section 75(2B) of the ESI Act, under which the Respondent was required to deposit as a condition precedent 50% of the amount due from the Respondent as claimed by the Corporation. That amount was claimed for the first time in C-18 notice. 50% of that amount could have been deposited

only after that notice was issued. This aspect has been correctly considered by the ESI Court. No substantial question of law, therefore, arises for further determination. Consequently, the Appeal is dismissed.

10.The Appellant was granted leave to amend the Memo of Appeal to add ground (m). He failed to amend it within the time granted. The Appellant has been allowed to amend the same.

(SMT.ROSHAN DALVI, J.)